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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 26 of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)
)
Inquiry Into Sports Programming)
Migration)

PP Docket No. 93-21 /

To: The Commission

COMMENTS OF ESPN, INC.

1. ESPN, Inc. ("ESPN") respectfully submits these comments in connection with the Notice of Inquiry ("Notice") in the above-referenced proceeding. ESPN is the nation's largest nonbroadcast programming network and is devoted entirely to sports coverage. ESPN's primary vehicle for household delivery is cable television but the service is also distributed through other nonbroadcast media, including TVRO, SMATV and MMDS systems. ESPN distributes approximately 4500 hours of original programming each year in over 60 categories of sports. Approximately 60% of ESPN's original programming hours are devoted to event coverage; about one-third covers sports news and information and the balance focuses on recreation and sports lifestyle shows.

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ESPN'S GROWTH AND SPORTS COVERAGE

2. To assist the Commission in its analysis, the Notice seeks information on the growth of sports programming networks in general and asks for particular information on the television coverage of Major League Baseball, The National Football League, The National Hockey League, The National Basketball Association, college football and basketball and the Olympics. In response, ESPN offers the following:

a) ESPN began telecasting in September 1979 with a beginning household base of 1.4 million. Since then, ESPN has steadily grown on an annual basis as follows:

1980 -- 7,329,000	1987 -- 45,200,000
1981 -- 13,609,000	1988 -- 49,700,000
1982 -- 22,800,000	1989 -- 54,800,000
1983 -- 24,300,000	1990 -- 57,200,000
1984 -- 34,800,000	1991 -- 59,100,000
1985 -- 36,100,000	1992 -- 61,404,000
1986 -- 40,200,000	1993 (to date)-- 61,773,000

b) ESPN's consistent programming philosophy has been to present to our viewers the widest possible variety of high-quality sports programs on television. We program both narrow and broad-based interest sports. We have, in pursuit

of our programming objective, at one time or other in our history, televised games in each of the major sports categories identified in the Notice for particular scrutiny but have also consistently covered such diverse sports as cycling, yachting, skiing, track and field, rodeo and equestrian. Indeed, we have televised many events over the years which but for the existence of ESPN would never have been televised at all much less to a national television audience.

c) ESPN's coverage of the professional sports especially identified in the Notice has been as follows:

<u>Sport</u>	<u>Year</u>	<u>Regular Season Games</u>	<u>Average Regular Season Ratings</u>	<u>Playoff Games</u>	<u>Average Playoff Ratings</u>
NFL	1987	8	10.6	--	--
	1988	8	9.3	--	--
	1989	8	10.2	--	--
	1990	8	9.8	--	--
	1991	9	8.4	--	--
	1992	9	8.4	--	--
MLB	1990	161	2.1	--	--
	1991	161	2.0	--	--
	1992	156	1.5	--	--
NBA	1982-83	40	2.0	10	2.8
	1983-84	40	2.0	10	2.6
NHL	1985-86	33	.9	33	1.6
	1986-87	32	.9	37	1.5
	1987-88	33	.8	37	1.6
	1992-93	26	.9	37	--

d) College football coverage has been a mainstay of ESPN's programming lineup, although our live coverage of

college football games only began in 1984. The majority of ESPN's college football inventory has been comprised of games of the member schools of the College Football Association but we have also televised games of the Big Ten, Pac 10, Ivy League, Division 1-AA school and various post-season bowl and all-star games. For the past five seasons, ESPN has presented an average of 50 college football telecasts per year with the annual average ratings for regular season games ranging from 2.0 to 3.6 depending on the conference presented and time period of the games. We have a five year average rating of 2.7 for all post-season games.

e) ESPN has televised over 100 college basketball games each year beginning with the 1979-80 season and has averaged over 200 such telecasts for each of the last five years. These telecasts have included games from schools from virtually every college conference in the nation and have featured both men's and women's programs. ESPN's college basketball telecasts have achieved an average rating over the past five years of 1.5.

f) ESPN has never televised the Olympics.

3. It is our view that the record set forth above represents a substantial achievement in the face of a dynamic set of competitive forces. Sports programming is available to the

sports viewer today via national network and local over-the-air broadcasts; on cable programmers like ESPN, USA Network, TNN, TNT, Prime Network, HBO and Showtime; via superstations including WTBS, WGN, WOR and WPIX; on national and regional pay-per-view; on regional cable networks and regional over-the-air syndicators. We all compete for distribution rights, viewers, production talent, innovative technology and advertiser and sponsorship support. The end result is more event coverage and more hours of diverse sports programming than has ever before been available on television. This has occurred without taking away the capacity of any broadcast distributor of sports to continue to compete for sports telecast rights nor have consumers of sports telecasts on broadcast stations been harmed.

THERE HAVE BEEN NO SUBSTANTIAL
CHANGES IN THE AVAILABILITY OF SPORTS ON
BROADCAST TELEVISION

4. Over the past several years ESPN has offered Congressional and FCC testimony on the subject of the so-called migration of sports from broadcast to non-broadcast distribution. Our message has been constant and direct: There is no objective measure we can find which demonstrates in any material way that the marketplace since 1980 has shifted sports programming away from national or local broadcast television to cable. The facts consistently

demonstrate that cable television has simply added to the national and local distribution of sports events and has provided an outlet for events which have never before been seen on television.

5. Attached hereto as Exhibits A and B are charts setting forth A.C. Nielsen statistics reporting on the number of sports programming hours and events presented by ABC, NBC and CBS in 1980, 1985 and 1991 (the last full year of this data). The results are clear. Exhibit A shows that through 1991 all three broadcast networks televised more hours of sports coverage than they did twelve years ago. Indeed, total network sports hours are up 19% in this span despite the addition of thousands and thousands of hours of new sports programming hitting the national market via cable. Exhibit B details event coverage by the networks and shows that except for Major League Baseball, the networks are devoting more coverage to all major categories than in 1980 and have not suffered the loss of any franchise. It is also worth noting that all the major team sports championships which have historically established a presence on broadcast television remain on broadcast television today as do the major college bowl games, the NCAA basketball championship and almost all major golf and tennis tournaments. Indeed, a growing number of events which have historically appeared on cable television are now being distributed in whole or in

part on broadcast television including the entire NCAA basketball championship (the opening rounds of which were carried by ESPN through the 1988-90 season), a half-dozen other NCAA championship events (including the College World Series final which was carried by ESPN until 1988), numerous professional golf tournaments, IndyCar and IMSA auto races, America's Cup yacht racing and, beginning this year, five games of the NHL playoffs. None of this activity supports a claim that broadcast station access to or distribution of sports is diminished.

NFL, NHL AND MLB

6. We would like to make a few observations about ESPN's contracts with the NFL, the NHL and Major League Baseball. We are confident that each of these leagues will also address these issues, so our comments will be brief:

a) ESPN has televised games of the National Football League since 1987. We have done so pursuant to an agreement which provides for exclusivity during the time period of our telecasts but which also requires ESPN to make our telecasts available to an over-the-air station in the cities of the participating teams for each game we cover.¹ NFL games

¹ This requirement is not applicable in the home team city if the game is not a sell out.

are the highest rated programs carried on ESPN and the Sunday night package results in the distribution to a national cable audience (and the home market of the participating teams via broadcast television) of a game which would otherwise have only been distributed regionally. Moreover, during the course of our NFL contracts, the league has expanded its inventory by adding a 17th and 18th week to the regular season schedule. Only one game per week out of this additional inventory goes to cable, thus continuing the NFL's pattern of providing all but a fraction of its total inventory to national or regional over-the-air coverage;

b) When ESPN's Major League Baseball contract for regular season coverage was announced in 1989 it was attacked by independent broadcast stations and their trade association, INTV, as one which would result in fewer games being telecast on local over-the-air stations and thus harmful to stations and viewers alike. ESPN stated openly in reply that the package had very limited exclusivity provisions applicable only on Wednesday evenings and would not diminish local broadcast coverage. Our analysis has proved entirely accurate. Local broadcasts of baseball games continue to increase. During the term of our MLB agreement (according to numbers provided to us by the MLB

Commissioner's Office) the number of local club over-the-air
telecasts hit an all-time high in 1991 at 1,674 and will top
that in 1993 with a comparative total of 1,691 for the
original 26 teams. Baseball's new expansion teams in

advertising inventory, local and national game inventory, recruiting, alumni contact, etc.) broadcast television has been and will remain an effective outlet and competitor for sports rights.

COLLEGE CONFERENCES AND EXCLUSIVITY

7. As a general operating principle, ESPN seeks to be the only national cable distributor of the events we carry and seeks to obtain time-period exclusivity against competing telecasts of events in the same league or conference. In some cases we are successful in obtaining these contract rights, and in others we are not.

8. Exclusivity is a common element in the purchase of sports programming. Indeed, exclusivity is a key element in virtually every component of the entertainment industry. Networks deliver programming exclusively to their affiliates, independent stations buy exclusive distribution rights for syndicated and sports programming, producers, directors and on-air talent have exclusive contracts, all for good reasons. Exclusivity ensures that a television programmer will have a unique product to offer viewers and advertisers and that the public will be offered a variety of entertainment and information options. Exclusivity also

gives the programmer the incentive to invest in promotion and high quality production for the return that it can provide not only to itself but to its viewers and advertisers.

9. ESPN has agreements with various college associations and conferences for coverage of college football and basketball and each has provisions related to exclusivity:

a) In college football, ESPN has contracts with the College Football Association and the Big-10 and Pac-10 Conferences. None of these agreements precludes either ESPN or the colleges from making other arrangements to televise games and each has done so. ESPN has the exclusive live telecasting rights to the games it covers, creating a time period of about three hours during which other games of the group or conference may not be aired. Our CFA agreement does, however, provide that schools may allow local, over-the-air and pay-per-view telecasts of games not selected by ESPN during ESPN's telecast windows. Attached hereto as Exhibit C is a chart which summarizes, to the best of our knowledge, the national and local telecasting activities of the major conferences carried on ESPN. It demonstrates that television coverage is extensive and that in every conference, unused inventory is available for even more telecasts by those schools.

b) ESPN's contracts for the coverage of college basketball generally do provide it with exclusive rights to the games it covers and restrict the time periods when a conference may televise other games directly opposite an ESPN telecast of that conference's games. Beyond that, our agreements are nonexclusive, allowing the conferences and individual schools to make other television arrangements. The broadcast and cable coverage of college basketball is substantial and we have provided our summary of it in Exhibit D. As the chart shows, there is available inventory despite the enormous degree of coverage the sport receives.

CONCLUSION

10. ESPN is very proud of its efforts in sports television and looks forward to the continuing challenge of providing the best in sports programming to the largest possible audience. Competition is the key to our endeavors and competition has provided the sports viewer with more coverage than ever before. The broadcast networks and local stations are an integral part of the sports television business and migration is not a demonstrable phenomenon.

Respectfully submitted,

ESPN, Inc.

SPORTS HOURS – 3 MAJOR NETWORKS

	<u>1980</u>	<u>1985</u>	<u>1991</u>
ABC	459	423	497
CBS	427	533	569
NBC	<u>426</u>	<u>498</u>	<u>494</u>
Total	<u>1,312</u>	<u>1,454</u>	<u>1,560</u>

Source: A.C. Nielsen Co. (Excludes Olympic Coverage)

SPORTS EVENTS – 3 MAJOR NETWORKS

	<u>1980</u>	<u>1985</u>	<u>1991</u>
Auto Racing	5	13	25
College Basketball	34	68	75
College Football	37	40	45
Golf	74	80	109
MLB	57	63	36
NBA	36	32	46
NFL	90	95	95
Tennis	23	37	34

Source: A.C. Nielsen Co. (Includes all regular season and post–season telecasts)

COLLEGE FOOTBALL - LIVE REGULAR SEASON

